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Agricultural Stabilization
and Conservation
Service

Agricultural
Marketing
Service

Washington, D.C.
20250

Short Reference
USDA-1
Revision No.1

July 1981

General Terms and Conditions

For the Procurement of
Agricultural Commodities
or Services

AD-33 Bookplate
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UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service
Agricultural Marketing Service
Washington, D.C. 20013

GENERAL TERMS AND CONDITIONS

FOR THE PROCUREMENT OF AGRICULTURAL COMMODITIES OR SERVICES (USDA-1)

Revision No. 1, Amendment No. 1 - November 1982

This amendment (a) revises Article 2(g) and Article 3 to incorporate certain organizational changes of USDA; (b) amends Article 5 and Article 72 in order to conform with the provisions of the Prompt Payment Act of 1982 (P.L. 97-177); and (c) corrects a typographical error in Article 29 as follows:

1. Article 2 of USDA-1 is amended by changing paragraph (g) to read as follows:

Article 2. Definitions

- (g) ASCS Commodity Office means the Kansas City ASCS Field Office or such other office as may be specified in the announcement.

2. Article 3 is revised by changing the second paragraph to read as follows:

Article 3. Inquiries by Offerors or Contractors

Inquiries concerning shipping instructions and payments shall be directed to:

Kansas City Field Office
U.S. Department of Agriculture
P.O. Box 8510
Wornall Station
Kansas City, Missouri 64114

3. Article 5 of USDA-1 is amended by changing the second sentence to read as follows:

Article 5. Discounts

However, if an offer specifies a cash discount on a payment made within a specified period, Agency shall be entitled to the discount on a payment made within this period in accordance with provisions of the Prompt Payment Act of 1982 (P.L. 97-177).

4. Article 74 of USDA-1 is amended by--

- (a) adding at the beginning of the first paragraph the following new sentence:

The provisions of the Prompt Payment Act of 1982 (P.L. 97-177) shall be applicable to invoices and payments.

- (b) amending the third sentence of fourth paragraph to read as follows:

Agency shall pay to contractor (or the assignee if any assignment is made pursuant to Article 71) any amounts due with respect to each shipment not later than (1) the 30th day after receipt by the Agency of a properly prepared invoice with the required supporting documents evidencing satisfactory performance of contract terms, or (2) the payment due date otherwise established by the contract.

5. Article 29 of USDA-1 is amended to read as follows:

Article 29. Independent Price Certification

- (b) Each person signing the offer thereby certifies that:

- (1) He/she is the person in offeror's organization responsible within that organization for the decision as to prices being offered and that he/she has not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this Article, or

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UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service
Agricultural Marketing Service
Washington, DC 20250

GENERAL TERMS AND CONDITIONS

FOR THE PROCUREMENT OF AGRICULTURAL COMMODITIES OR SERVICES

This document contains information, representations and requirements relating to the submission and acceptance of offers made pursuant to announcements or invitations for offers which specifically incorporate this document, in whole or in part, by reference, and which are issued by the United States Department of Agriculture or Commodity Credit Corporation for the purchase or servicing of agricultural commodities. Each such announcement will specify terms and conditions, in addition to those included in this document, which are applicable to the proposed procurement of commodities or services. References in this document to a particular regulation, or other document, shall be deemed to refer to such document as it may be revised or amended and any superseding document as of the time offers are invited.

PART A - INFORMATION FOR OFFERORS

Article 1. Descriptive Headings

The descriptive headings of the various contract terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

Article 2. Definitions

The definitions given for the following words and phrases shall apply whenever these words and phrases are used in this document and any other document which becomes a part of a contract in which any of the provisions of this document are incorporated, unless otherwise specified in the contract:

(a) "Agency" means the United States Department of Agriculture or Commodity Credit Corporation, whichever is designated in the announcement as procuring the commodity or services.

(b) "Agricultural commodity" means a raw agricultural commodity or a product thereof.

(c) "AMS" means the Agricultural Marketing Service of USDA

(d) "Announcement" means an instrument which states terms and conditions for the procurement of the designated commodity or service. It may in itself invite offers for the commodity or service in which case it will be called "Announcement/Invitation." In other instances, it may provide for the issuance of a separate notice requesting bids and may set forth other special terms. Such separate notice will be called an "Invitation." For purposes of brevity, the term announcement as used throughout this document applies to all variations.

- (e) "Article" means one of the Articles of this document.
- (f) "ASCS" means the Agricultural Stabilization and Conservation Service of USDA.
- (g) "ASCS Commodity Office" means the Kansas City ASCS Commodity Office or such other office as may be specified in the announcement.
- (h) "Business day" means a day of the week, excluding Saturday, Sunday, and Federal holidays. Unless otherwise specified, any other reference to days is on a calendar basis.
- (i) "Causes" as used in the phrases "causes beyond the control and without the fault or negligence" includes, but is not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; however, in every case the failure to perform must be beyond the control and without the fault or negligence of the party to the contract seeking excuse from liability.
- (j) "The commodity" means the agricultural commodity delivered or to be delivered to Agency by Contractor or the serviced commodity produced or to be produced by Contractor from the agricultural commodity delivered by Agency to Contractor.
- (k) "CCC" means Commodity Credit Corporation, a wholly owned corporation of the United States within USDA.
- (l) "Contract" means the Contractor's offer, Agency's acceptance, this document, the applicable announcement and other documents incorporated by reference.
- (m) "Contracting Officer" means the person signing the contract on behalf of Agency or any other designated officer or employee of Agency who is authorized to sign contracts on behalf of Agency.
- (n) "Contractor" means the person, firm, corporation or other legal entity obligated under the contract with Agency.
- (o) "Offer" means the instrument(s) submitted by offeror to Agency in response to an announcement.
- (p) "Offeror" means the person, firm, corporation or other legal entity submitting an offer in response to an announcement.
- (q) "Service" means to process, package, and perform other acts under a contract with respect to commodities owned by Agency.
- (r) "Shipment" includes transfer in store where the shipping instructions so provide.
- (s) "USDA" means the United States Department of Agriculture.

Article 3. Inquiries by Offerors or Contractors

Inquiries concerning contract matters shall be directed to the Contracting Officer.

Inquiries concerning shipping instructions and payment shall be directed to:

Kansas City ASCS Commodity Office
U. S. Department of Agriculture
P.O. Box 8510
Kansas City, MO 64114

Telephone numbers of particular offices to contact will be listed in the applicable announcement.

Article 4. Preparation of Offers

Offerors are cautioned to read this document and the applicable announcement carefully and to verify prices before submitting offers. Offerors must make their own estimates of the facilities and difficulties attending the performance of the proposed contract, including local conditions, uncertainty of weather, financial considerations, availability of materials and containers, and all other contingencies.

Article 5. Discounts

Any discounts offered for prompt payment will not be considered as a factor in evaluating offers. However, if an offer specifies a cash discount on a payment made within a specified period, Agency shall be entitled to the discount on a payment made within this period. The period will begin on the date of receipt in the ASCS Commodity Office of a properly executed and documented invoice.

Article 6. Signing of Offers

An offer shall set forth the full business name and address of offeror. An offer mailed, telecopied, or hand delivered shall be signed by a person authorized to execute contracts on behalf of offeror. Any offer submitted by telegram, mailgram, telex or TWX must bear the name of such person as well as that of offeror. A power of attorney or other documentary evidence of the authority for a person to execute the contract in the name of offeror may be required by Agency.

Article 7. Late Offers and Modifications or Withdrawals

(a) Any offer received at the office designated in the announcement after the exact time specified for receipt will not be considered unless it is received before award is made and either:

(1) It was sent by registered or certified mail not later than the fifth day prior to the date specified for the receipt of offers; or

(2) It was sent by mail, mailgram, or telegram if authorized, and it is determined by Agency that the late receipt was due solely to mishandling by Agency.

(b) Any modification or withdrawal of an offer is subject to the same conditions as in (a), above. An offer may also be withdrawn in person by an offeror or an authorized representative, but only if the withdrawal is made prior to the exact time set for receipt of offers. Identification and a signed receipt must be provided.

(c) The only acceptable evidence to establish:

(1) The date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. Postal Service postmark on both the envelope or wrapper and the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the offer, modification, or withdrawal shall be deemed to have been mailed late. (The term "postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye "postmark" on both the receipt and the envelope or wrapper.)

(2) The time of receipt at the Department of Agriculture is the time-date stamp placed on the offer wrapper by the mailroom servicing the contracting office or other documentary evidence of receipt maintained by the Department.

(d) Notwithstanding (a) and (b) of this provision, a late modification of an otherwise successful offer which makes its terms more favorable to Agency will be considered at any time it is received and may be accepted.

Article 8. Conditional Offers

Any qualification or condition in, or added to, the offer may make it ineligible for consideration.

Articles 9 - 15 [RESERVED]

PART B - CONSIDERATION, ACCEPTANCE OR REJECTION OF OFFERS

Article 16. Responsibility of Offeror

Agency reserves the right to refuse to consider an offer if Agency does not have adequate information to determine responsibility of offeror, financially or otherwise, to meet contract obligations contemplated in the announcement. If a prospective offeror is in doubt as to whether Agency is acquainted with his/her financial responsibility, offeror should either submit a financial statement to Agency before making an offer or should communicate with the office named in the announcement to determine whether such a statement is desired. When satisfactory financial responsibility has not been established, Agency also reserves the right to consider an offer only after receipt from offeror of a bid bond, acceptable to Agency, assuring that, if the offer is accepted by Agency, an acceptable performance bond or other acceptable security will be furnished as required by Agency or, in lieu of such bid bond, a certified or cashier's check, irrevocable commercial letter of credit, or other security acceptable to Agency. The security for the offer, other than bid bond, will be returned to an unsuccessful offeror as soon as practicable after the opening of offers, and to a successful offeror after a performance bond or other security acceptable to Agency has been furnished.

Article 17. Contracts of \$1 Million or More

If any contract award under the announcement, when let, exceeds \$1 million, the prospective Contractor and known first-tier subcontractors with contracts of \$1 million or more shall, before the award of the contract, be subject to a compliance review, which shall have been made within 12 months prior to award of contract, pursuant to Chapter 60 of Title 41 of the Code of Federal Regulations. In order to qualify for the award of a contract, such Contractors and first-tier subcontractors must be found to be in compliance pursuant to section 60-1.20 (b) and Part 60-2 of such Chapter.

Article 18. Acceptance or Rejection of Offers and Notification

(a) The offers which will be accepted will be those which are considered to be most advantageous to Agency. Factors which will be considered in addition to price, will be specified in the announcement as applicable.

(b) If an offeror is shipping late under current contracts at the time of submission of an offer, such performance shall be sufficient cause for Agency to deem offeror unable to perform and Agency may, at its option, refuse to consider the offer.

(c) Agency reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received.

(d) Agency may accept an item or group of items of any offer, unless offeror qualifies the offer by specific limitations. Unless otherwise provided in the announcement, offers shall not be submitted for any quantities less than those specified. Agency reserves the right to accept any item for a quantity less than the quantity offered at the unit prices offered unless offeror specifies otherwise in the offer.

(e) An acceptance mailed or otherwise forwarded to the successful offeror within the time for acceptance specified in the announcement shall be deemed to result in a binding contract without further action by either party, unless the acceptance specifies or is conditioned on further action.

(f) Offerors whose offers are rejected will be notified of such rejection by collect telegram or by letter only if they specifically request such notification.

Articles 19 - 24. [RESERVED]

PART C - PREAWARD REPRESENTATIONS, CERTIFICATIONS AND WARRANTIES

Article 25. Representations and Warranties of Offeror

In submitting an offer, offeror represents and warrants that:

(a) If the offer is for sale of an agricultural commodity to Agency, (1) he/she is an established manufacturer of the particular commodity sought by Agency, or (2) if newly entering into such manufacturing activity, has made all necessary prior arrangements for space, equipment, and personnel to perform the manufacturing operations required for contract performance, or (3) is a regular dealer already established in a going business regularly dealing in the commodity or in the principal components of the commodity sought by Agency.

(b) If the offer is for the servicing of an agricultural commodity owned by Agency, offeror is regularly engaged in providing the kind of service sought by Agency, or if newly entering into providing such service, has made all necessary arrangements for space, equipment, and personnel to perform the service sought by Agency.

(c) Each end product is a domestic source end product as defined in Article 51, components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, and each component which the announcement requires to be wholly produced in the United States was so produced.

Article 26. Minority Business Enterprise Representation

Offeror shall state in the offer whether his/her firm is a minority business enterprise, as defined in Article 42.

Article 27. Women-Owned Business Representation

(Applicable to all contracts which exceed \$10,000)

Offeror shall state in the offer whether the concern is a woman-owned business, as defined in Article 43. Businesses which are publicly owned, joint stock associations, and business trusts are exempted. Exempted businesses may voluntarily represent that they are, or are not, woman-owned if this information is available.

Article 28. Small Business and Small Disadvantaged Business Subcontracting Representation (advertised)

(Applicable to contracts which offer subcontracting opportunities and which exceed \$500,000.)

(a) This provision does not apply to small business concerns.

(b) The term "subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime

contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

(c) The offeror acknowledges that it is aware of the subcontracting plan requirement in this provision; and if selected for award, will submit within 20 days or such time as specified by the Contracting Officer a subcontracting plan that will afford the maximum practicable opportunity to participate in the performance of the contract to small and small disadvantaged concerns, and will include:

(1) Percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; (For the purposes of the subcontracting plan, the Contractor may include all purchases which contribute to the performance of the contract, including a proportionate share of products, services, etc., whose costs are normally allocated as indirect or overhead costs.)

As part of its establishment of percentage goals the apparent successful offeror shall also include in its subcontracting plan:

(i) A statement of:
(A) total dollars planned to be subcontracted;
(B) total dollars planned to be subcontracted to small business;
and
(C) total dollars planned to be subcontracted to small disadvantaged business.

(ii) A description of the principal product and service areas to be subcontracted and an identification of those areas where it is planned to use (A) small business subcontractors, and (B) small disadvantaged business subcontractors.

(2) The name of an individual within the employ of the offeror who will administer the offeror's subcontracting program and a description of the duties of such individual;

(3) A description of the efforts the offeror will take to assure that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror will include the article entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals in all subcontracts which offer further subcontracting opportunities and to require all subcontractors (except small business concerns) which receive subcontracts in excess of \$500,000 to adopt and comply with a plan similar to the plan agreed to by the offeror.

(5) Assurances that the offeror will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting

agency or the Small Business Administration in order to determine the extent of compliance by the offeror with the subcontracting plan; and

(6) A recitation of the types of records the successful offeror will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

(i) Small and disadvantaged business source lists, guides and other data identifying small and disadvantaged business vendors.

(ii) Organizations contacted for small and disadvantaged business sources.

(iii) On a contract-by-contract basis, records on all subcontract solicitations over \$100,000 indicating on each solicitation (A) whether small business was solicited, and if not, why not; (B) whether small disadvantaged business was solicited, and if not, why not; and (C) reasons for the failure of solicited small business or small disadvantaged business to receive the subcontract award. This requirement does not apply to a plan submitted pursuant to paragraph (f) hereof.

(iv) Records to support other outreach efforts:

- . Contacts with minority and small business trade associations.
- . Contacts with business development organizations.
- . Attendance at small and minority business procurement conferences and trade fairs.

(v) Records to support internal activities to guide and encourage buyers:

- . Workshops, seminars, training programs.
- . Monitoring activities to evaluate compliance.

(vi) On a contract-by-contract basis, records to support subcontracting award data submitted to the Government including name and address of subcontractor. This requirement does not apply to a plan submitted pursuant to paragraph (f) hereof.

(d) The offeror understands that:

(1) It agrees to carry out the Government's policy to provide the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to

participate in the performance of the contract, consistent with its efficient performance.

(2) If it does not submit a subcontracting plan within 20 days or such time as specified by the Contracting Officer, it will be ineligible to be awarded the contract.

(3) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(4) It is the offeror's responsibility to develop a subcontracting plan with respect to both small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals and that each such aspect of the plan will be judged independently of the other.

(e) The failure of any contractor or subcontractor to comply in good faith with (1) the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals or (2) the terms of any subcontracting plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Advertised) provision, will be a material breach of the contract or subcontract.

(f) Commercial Products. If a commercial product (defined below) is offered, the required subcontracting plan may relate to the company's or division's production generally (both for commercial and noncommercial products) rather than solely to the item being procured under the Government contract. In such cases, the Contractor shall be required to submit one company-wide, annual plan to be reviewed for approval by the first agency with which it enters into a prime contract (which requires a subcontracting plan) during the fiscal year, or by another agency satisfactory to the Contracting Officer. The approved plan will remain in effect for the company's entire fiscal year for all of the company's or division's commercial products. The term "commercial products" means products in regular production sold in substantial quantities to the general public and/or industry at established market or catalog prices. A product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product may be regarded for the purpose of this article as a commercial product.

Article 29. Independent Price Certification

(a) In submitting an offer, offeror certifies, and in the case of a joint offer each party thereto certifies as to its own organization, that:

(1) The prices stated in the offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices, with any other offeror or with any competitor;

(2) Unless otherwise required by law, the prices quoted in the offer have not been knowingly disclosed by offeror and will not knowingly be disclosed by offeror prior to opening of offers by Agency, directly or indirectly, to any other offeror or to any competitor; and

(3) No attempt has been made or will be made by offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

(b) Each person signing the offer thereby certifies that:

(1) He/she is not the person in offeror's organization responsible within that organization for the decision as to the prices being offered and that he/she has not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this Article, or

(2) (1) He/she is not the person in offeror's organization responsible within that organization for the decision as to prices being offered but has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this Article, and as their agent does hereby so certify; and

(11) Has not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this Article.

(c) This certification is not applicable to a foreign offeror submitting an offer for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(d) An offer will not be considered for acceptance where (a)(1), (a)(3), or (b) of this Article has been deleted or modified. Where subparagraph (a)(2) of this Article has been deleted or modified, the offer will not be considered for acceptance unless offeror furnishes with the offer a signed statement which sets forth in detail the circumstances of the disclosure and the Contracting Officer determines that such disclosure was not made for the purpose of restricting competition.

Article 30. Certification of Nonsegregated Facilities

(Applicable to contracts and subcontracts, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause.)

By the submission of an offer, offeror certifies that he/she does not maintain or provide for employees any segregated facilities at any of his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. Offeror certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and that he/she will not permit employees to perform their services at any locations, under his/her control, where segregated facilities are maintained. Offeror agrees that a breach of this certification is a violation of the Equal Opportunity Clause in Article 41. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage

or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, religion, sex, color, or national origin, because of habit, local custom, or otherwise. Offeror further agrees that (except where identical certifications from proposed subcontractors for specific time periods have been obtained he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that he/she will retain such certification in the files; and that he/she will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods).

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a specified period (i.e., quarterly, semiannually, or annually).

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001, 15 U.S.C. 714 m (a); and 31 U.S.C. 231.

Article 31. Covenant Against Contingent Fees

Offeror warrants that no person or selling agency has been employed or retained to solicit or secure that contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by offeror for the purpose of securing business. For breach or violation of this warranty, Agency shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Article 32. Taxes

(a) Offeror warrants that the price offered includes all applicable Federal, State and local taxes and does not include those taxes from which the United States Government is exempt or from which offeror would be exempt because:

(1) sale is to an Agency of the United States, or

(2) sale to Agency is for export, or

(3) the serviced commodity delivered to Agency is a commodity owned by Agency which was delivered to offeror for servicing.

(b) If offer is accepted, Agency shall furnish any necessary tax exemption certificates or, if the commodity is for export, furnish evidence of exportation.

(c) The term "local taxes" as used in (a) of this Article includes taxes imposed by a possession of the United States, and the Commonwealth of Puerto Rico.

Article 33. Buy American Certification

The bidder or offeror hereby certifies that end products furnished to Agency are in compliance with the Buy American Act (41 U.S.C. 10a-10d) as provided in Article 51.

Articles 34 - 39. [RESERVED]

PART D - POST AWARD PROVISIONS

Article 40. Listing of Employment Openings

(This affirmative action clause is applicable in all contracts and subcontracts of \$10,000 or more as required by all the regulations of the Secretary of Labor.)

DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

(a) The Contractor will not discriminate against any employee or applicant for employment because such person is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of a contract and those which occur during the performance of a contract, including those not generated by a contract and including those occurring at an establishment of the Contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service but are not required to provide those reports set forth in paragraphs (d) and (e).

(c) Listing of employment openings with the employment service system pursuant to this article shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which are attached to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive Orders or regulations regarding nondiscrimination in employment.

(d) The reports required by paragraph (b) of this article shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or where the Contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of nondisabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the

Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The Contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The Contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the Contracting Officer or of the Secretary of Labor. Documentation would include personnel records, respective job openings, recruitment, and placement.

(e) Whenever the Contractor becomes contractually bound to the listing provisions of this article, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(f) This article does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(g) The provisions of paragraphs (b), (c), (d), and (e) of this article do not apply to openings which the Contractor proposes to fill from within his/her own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of the organization or employer-union arrangement for that opening.

(h) As used in this article: (1) "all suitable employment openings" include, but is not limited to, openings which occur in the following job categories: production and non-production; plant and office; laborers and mechanics; supervisory and non-supervisory; technical; and executive, administrative, and professional openings that are compensated on a salary basis of less than \$25,000 per year. This term includes full-time employment, temporary employment of more than three (3) days' duration, and part-time employment. It does not include openings which the Contractor proposes to fill from within the organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances, an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.

(2) "Appropriate office of the State employment service system" means the local office of the Federal/State national system of public employment offices with assigned responsibility for serving the area where the employment opening

is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(3) "Openings which the Contractor proposes to fill from within the organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including affiliates, subsidiaries, and the parent companies) and includes any openings which the Contractor proposes to fill from regularly established "recall" lists.

(4) "Openings which the Contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the Contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Contractor and representatives of the employees.

(i) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Vietnam Era Veteran's Readjustment Assistance Act of 1974.

(j) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(k) The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs (OFCCP) provided by or through the Contracting Officer. Such notice shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and the rights of applicants and employees.

(l) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding that he/she is bound by terms of the Act and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(m) The Contractor will include the provisions of this article in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director, OFCCP, may direct to enforce such provisions, including action for noncompliance.

Article 41. Equal Opportunity Clause

(The provisions of this Article are applicable to contracts exceeding \$10,000 unless they are exempt under rules, regulations and relevant orders of the Secretary of Labor (41 CFR Ch. 60).)

During the performance of the contract, Contractor agrees as follows:

(a) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Agency setting forth the provisions of this Equal Opportunity Clause.

(b) In all solicitations or advertisements for employees placed by or on behalf of Contractor, Contractor will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice, to be provided by Agency, advising the labor union or workers' representative of Contractor's commitments under this Equal Opportunity Clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Contractor will comply with all provisions of the Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and the rules, regulations, and relevant orders of the Secretary of Labor.

(e) Contractor will furnish all information and reports required by the Executive Order, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of Contractor's noncompliance with the Equal Opportunity Clause of the contract or with any of such rules, regulations, or orders, the contract may be cancelled, terminated, or suspended in whole or in part, and Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in the Executive Order, as amended, and such other sanctions may be imposed and remedies invoked as provided in the Executive Order or by rules, regulations, or orders of the Secretary of Labor or as otherwise provided by law.

(g) Contractor will include the provisions of subparagraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of the Executive Order, as amended, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, That in the event contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by Agency, contractor may request the United States government to enter into such litigation to protect the interests of the United States.

Article 42. Utilization of Minority Business Enterprises

(a) It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts.

(b) Contractor agrees to use best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of the contract. As used in the contract, the term "minority business enterprise" means a business at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are Black Americans, Hispanic Americans, American-Orientals, American-Indians, American-Eskimos, and American Aleuts. Contractor may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

Article 43. Utilization of Women-Owned Business Concerns

(Applicable if the contract exceeds \$10,000.)

(a) It is the policy of the United States Government that women-owned businesses shall have the maximum practicable opportunity to participate in the performance of contracts awarded by any Federal agency.

(b) The Contractor agrees to use his/her best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, a "women-owned business" concern means a business that is at least 51 percent owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management. "Women" means all women business owners. For the purpose of this definition businesses which are publicly owned, joint stock associations, and business trust are exempted. Exempted businesses may voluntarily represent that they are, or are not, women-owned if this information is available.

Article 44. Women-Owned Business Concerns Subcontracting Program

(Applicable if the contract exceeds \$500,000.)

(a) The Contractor agrees to establish and conduct a program which will enable women-owned business concerns to be considered fairly as subcontractors and suppliers under the contract. In this connection, the contractor shall:

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(1) Designate a liaison officer who will administer the Contractor's "Women-Owned Business Concerns Program."

(2) Provide adequate and timely consideration of the potentialities of known women-owned business concerns in all "make-or-buy" decisions.

(3) Develop a list of qualified offerors that are women-owned businesses and assure that known women-owned business concerns have an equitable opportunity to compete for subcontracts, particularly by making information on forthcoming opportunities available, by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules so as to facilitate the participation of women-owned business concerns.

(4) Maintain records showing (i) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of women-owned business concerns; (ii) awards to women-owned businesses on the source list by minority and non-minority women-owned business concerns; and (iii) specific efforts to identify and award contracts to women-owned business concerns.

(5) Include the "Utilization of Women-Owned Business Concerns" article in subcontracts which offer substantial subcontracting opportunities.

(6) Cooperate in any studies and surveys of the Contractor's women-owned business concerns procedures and practices that the Contracting Officer may from time-to-time conduct.

(7) Submit periodic reports of subcontracting to women-owned business concerns with respect to the records referred to in subparagraph (4) above, in such form and manner and at such time (not more often than quarterly) as the Contracting Officer may prescribe.

(b) The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000 and which offers substantial subcontracting possibilities, provisions which shall conform substantially to the language of this clause, including this paragraph (b), and to notify the Contracting Officer of the names of such subcontractors.

(c) The Contractor further agrees to require written certification by its subcontractors that they are bona fide women-owned and controlled business concerns in accordance with the definition of a women-owned business concern as set forth in the Utilization Clause 43 (b) above at the time of submission of bids or proposals.

Article 45 Employment of the Handicapped

(This affirmative action clause is applicable to all contracts and subcontracts of \$2,500 or more as required by the regulations of the Secretary of Labor.)

(a) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor

agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

(b) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, as amended.

(c) In the event of the Contractor's noncompliance with the requirements of this article, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(d) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor, provided by or through the Contracting Officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(e) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(f) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

Article 46. Utilization of Labor Surplus Area Concerns

(Applicable if the contract or subcontract exceeds \$10,000.)

(a) It is the policy of the Government to award contracts to labor surplus area concerns that agree to perform substantially in labor surplus areas, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his/her best efforts to place subcontracts in accordance with this policy.

(b) In complying with paragraph (a) of this article and with Article 47 entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals,"

paragraph (b), the Contractor in placing subcontracts shall observe the following order of preference: (1) Small business concerns that are labor surplus area concerns, (2) other small business concerns, and (3) other labor surplus area concerns.

(c) (1) The term "labor surplus area" means a geographical area identified by the Department of Labor as an area of concentrated unemployment or underemployment or an area of labor surplus.

(2) The term "labor surplus area concern" means a concern that together with its first tier subcontractors will perform substantially in labor surplus areas.

(3) The term "perform substantially in a labor surplus area" means that the costs incurred on account of manufacturing, production, or appropriate services in labor surplus areas exceed 50 percent of the contract price.

(4) Maintain records showing the procedure which has been adopted to comply with the policies set forth in this article and report subcontract awards (see 41 CFR 1-16.804-5 regarding use of Optional Form 61). Records maintained pursuant to this article will be kept available for review by the Government until the expiration of 1 year after the award of a contract, or for such longer period as may be required by any other clause of a contract or by applicable law or regulations.

Article 47. Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantage Individuals.

(Applicable if the contract exceeds \$10,000.)

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal Agency.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of the contract. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the Small Business Administration or the contracting agency which may be necessary to determine the extent of the Contractor's compliance with this article.

(c) (1) As used in the contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern:

(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or in the case of any

publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(ii) whose management and daily business operations are controlled by one or more of such individuals.

The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

Article 48. Convict Labor

In connection with the performance of work under the contract, Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082 (c)(2)) and Executive Order 11755, December 29, 1973.

Article 49. Clean Air and Water Clause

(Applicable only if the contract exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319 (c)) and is listed by EPA, or the contract is not otherwise exempt under 41 CFR 1-1.2302-4.)

(a) Contractor agrees as follows:

(1) To comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of a contract.

(2) That no portion of the work required by the prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when a contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.

(3) To use his/her best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed.

(4) To insert the substance of the provisions of this article in any sub-contract not exempt under 41 CFR 1-1.2302-4, including this paragraph (4).

(b) The terms used in this article have the following meanings:

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5 (d)), an approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

(5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated.

Article 50. Officials Not to Benefit

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the contract if made with a corporation for its general benefit, and shall not extend to any benefits that may accrue from the contract to a member of or delegate to Congress or a Resident Commissioner in his/her capacity as a farmer.

Article 51. Buy American

(a) In acquiring end products, the Buy American Act (41 U.S. Code 10a-10d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(1) "Components" mean those articles, materials, and supplies which are directly incorporated in the end products;

(2) "End products" mean those articles, materials, and supplies which are to be acquired under the contract for public use; and

(3) A "domestic source end product" means (i) an unmanufactured end product which has been mined or produced in the United States and (ii) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a) (3) (ii), components of foreign origin of the same type or kind as the products referred to in (b) (2) or (3) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under the contract only domestic source end products, except end products:

(1) Which are for use outside the United States;

(2) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(3) As to which the head of the Agency determines the domestic preference to be inconsistent with the public interest; or

(4) As to which the head of the Agency determines the cost to the Government to be unreasonable.

Article 52. Walsh-Healey Public Contracts Act

If the contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect. (Note: Attention is directed to the possibility that wage determinations may have been made under the Walsh-Healey Public Contracts Act providing minimum wages for employees engaged in the manufacture for sale to the Government of the commodity covered by the announcement. Information in this connection may be obtained from the Wage and Hour and Public Contracts Divisions, U.S. Department of Labor, Washington, DC 20210.)

Article 53. Contract Work Hours and Safety Standards Act - Overtime Compensation

The contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) Overtime Requirements - No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any workweek in which he/she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than one and one-half times the basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) Violation; Liability for Unpaid Wages; Liquidated Damages - In the event of any violation of the provisions of paragraph (a), Contractor and any subcontractor responsible therefor shall be liable to any affected employee for unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

(c) Withholding for Unpaid Wages and Liquidated Damages - The Agency may withhold from Contractor, any monies payable on account of work performed by Contractor, or any subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) Subcontracts - Contractor shall insert paragraphs (a) through (d) of this Article in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) Records - Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three (3) years after final payment under the contract.

Article 54. Additional Bond Security

If any surety upon any bond furnished in connection with the contract becomes unacceptable to Agency, Contractor shall promptly furnish such additional security as may be required by Agency to protect the interests of the Government.

Article 55. Specifications

The commodity shall meet the specifications prescribed by the contract and shall conform to the applicable provisions of the Federal Food, Drug, and Cosmetic Act, as amended, and regulations issued thereunder.

Contractor agrees to hold the United States harmless if royalties are due because of the formulation or processing requirements for the commodity, or any requirements of the contract.

Article 56. Sanitation, Premises, and Equipment

(a) All equipment, supplies, facilities, storage space, and premises shall be maintained in a clean, sanitary condition in accordance with good commercial practice. The commodity shall be handled by persons in good health and free from any communicable diseases and in such manner as to prevent contamination.

(b) The cars or trucks in which the commodity is loaded by Contractor shall be clean and sanitary and in a condition to protect the commodity during transit so that it arrives at destination free from contamination.

(c) Agency reserves the right to inspect and approve the premises and equipment before acceptance of offers and to inspect at any time, at Agency's expense, during the period of performance under the contract, equipment, supplies, facilities, storage space, and premises used in the manufacturing, processing, or servicing of the commodity. Contractor agrees to permit, during regular business hours, authorized representatives of Agency to enter any of his/her premises at which the commodity is manufactured, processed, stored, or serviced, and to inspect such equipment, supplies, facilities, storage space, and premises and to observe the manufacturing, processing, or servicing operations. Any such inspection or prior approval of equipment and premises shall not relieve Contractor of his/her independent obligation to maintain the equipment and premises in a satisfactory and sanitary condition. Failure of Contractor to maintain such equipment and premises in a satisfactory and sanitary condition shall constitute a failure to perform entitling Agency to terminate the contract under Article 70(a)(2). If for any reason Contractor's plant designated in the contract is impeded or prevented from manufacturing, processing, or servicing the commodity, Contractor may, with the approval of Agency, designate another plant for the manufacture, processing or servicing of such commodity: Provided, That if by reason of designation of such other plant additional expenses are incurred by Agency, such additional expenses shall be for the account of Contractor and any savings shall accrue to Agency.

(d) The commodity shall be processed in a plant which, at the time of processing, is operating in accordance with any regulations published by Agency applicable to plants processing the commodity.

Article 57. Inspection

(a) The commodity, and the containers and markings, shall be inspected by Agency or by a person of the inspection or grading service designated by Agency to determine whether they meet the contract requirements. Contractor is responsible for requesting inspection in sufficient time to permit issuance of a certificate of inspection before the date the shipment is to be made.

(b) The cost of inspection, samples taken for inspection, and any chemical analysis required for testing shall be for the account of Contractor unless otherwise provided in the contract. Contractor shall furnish all necessary assistance to perform inspection, including but not limited to, the labor necessary to make the product accessible for inspection, the equipment necessary for checkweighing, and satisfactory facilities and space for sampling, grading, and recordkeeping.

(c) Inspectors and graders have no authority to prescribe any changes in the contract or to order contractor to perform contrary to any manner prescribed in the contract. Furthermore, inspector and grader authority is limited to determining acceptability of commodities tendered or serviced under the contract.

(d) Inspection shall include checkweighing of a representative number of containers of the commodity.

(e) Inspection shall not relieve Contractor of his/her responsibility to furnish a commodity (including packages and containers) meeting specifications or to otherwise fulfill the terms of the contract. An inspection certificate is only prima facie evidence of the matters therein stated at the time and place of inspection.

(f) If any reinspection is performed by Agency at destination points, the costs thereof shall be borne by Agency if the product is found to be in compliance with the contract provisions, otherwise the cost shall be borne by Contractor.

Article 58. Checkloading

(a) Contractor shall not load the commodity for shipment or transfer the commodity in store unless, at the time of such loading or transferring, the commodity is checkloaded by Agency or by a person of the inspection or grading service designated by Agency. Contractor is responsible for giving notice in sufficient time for a checkloader to be present. The cost of checkloading shall be for the account of Contractor. Checkloading refers to identifying the commodity which was previously inspected and found to meet contract requirements, examining the commodity at the time of loading or transferring for condition of containers and for compliance with labeling and container marking requirements, and determining the number of containers per car, truck, or lot.

(b) Checkloading by persons licensed or authorized by Agency shall not relieve Contractor of the obligation to effect a delivery of the commodity meeting contract requirements or constitute a waiver of any of Agency's rights under the contract. The certificates issued as a result of such official checkloading shall be only prima facie evidence of the number and condition of containers.

(c) Contractor shall be liable for all shortages which occur before delivery, except that if shipment is by common carrier, Contractor shall not be liable for a shortage reported at destination unless it can be established, notwithstanding the checkloading certificate, that there was an actual shortage at the time of loading for shipment.

(d) This paragraph (d) is not applicable to purchases delivered f.o.b. origin. If the shipment is by truck and Agency specifically requests "Exclusive Use of Vehicle", Agency will reimburse Contractor for any additional transportation costs due to shipment under "Exclusive Use of Vehicle." The sealing of trucks as part of the checkloading procedure shall not be construed as such a request. In the absence of such a request by Agency, any additional cost of transportation and related services due to shipment under "Exclusive Use of Vehicle" shall be for Contractor's account. Contractor shall be responsible for making such arrangements as may be necessary to prevent the application of "Exclusive Use of Vehicle" charges when such charges result in higher transportation costs. The arrangements to be made by Contractor may include an instruction to the checkloader not to seal the truck when the sealing will result in "Exclusive Use of Vehicle" charges. If, notwithstanding such arrangements, the checkloader seals the truck, Contractor shall have the responsibility for removing the seals.

Article 59. Shipment and Delivery

(a) The ASCS Commodity Office shall mail a Notice(s) to Deliver at least seven days prior to the first day of each period scheduled in the contract for the shipment from origin of a specified quantity of the commodity. Any modification of such period must be made by agreement with the applicable Contracting Office. Such period or any modification thereof is hereinafter called "the contract shipping period." The date on which the Notice to Deliver is mailed shall be shown thereon. Contractor shall ship in accordance with instructions in the Notice(s) to Deliver, except that (1) if a Notice to Deliver is mailed less than seven days prior to the first day of the contract shipping period, such shipping period and each subsequent consecutive shipping period under the contract directly affected by the delay shall be extended by the number of days such Notice is mailed late; and (2) in any event, Contractor shall be allowed the number of business days contained in the period specified in the contract for shipment of the contract quantity, beginning with seven days after the Notice to Deliver is mailed. Notwithstanding the foregoing, Contractor shall not be entitled to any extension of the contract shipping period under this Article 59(a) unless he/she furnishes evidence satisfactory to Agency that it was prepared to ship during the contract shipping period.

(b) The commodity shall be delivered by Contractor in the manner (f.a.s. vessel, f.o.b. cars, etc.) and at the point(s) of delivery, as required by the contract, pursuant to shipping instructions issued by Agency. Shipment shall not be made before receipt from Agency of shipping instructions, or before the time the commodity has been inspected and found to meet contract specifications.

(c) Immediately on shipment, Contractor shall, in accordance with instructions from Agency, notify Agency, or consignee, or both, of the shipment.

(d) Title, subject to Agency's right as provided in Article 63, and risk of loss and damage, subject to the provision in Article 58(c) with respect to shortages, shall pass to Agency on delivery of the commodity, which, if delivery is f.a.s. vessel, shall be when the commodity is placed:

- (1) Alongside vessel within reach of its loading tackle, or

(2) On the dock designated by Agency if the vessel is not available, unless Contractor failed to ship pursuant to the shipping instructions and Agency determines that such failure caused the commodity to arrive too late to be loaded aboard the vessel.

(e) If delivery is made f.a.s. vessel at the designated port, Contractor shall pay all costs, including but not limited to wharfage, tollage, checking and handling charges necessary to place the commodity free alongside vessel within reach of its loading tackle, and shall furnish a dock receipt, ship's receipt, or other similar document as evidence of delivery. If, after arrival of commodity at the designated port, Contractor is delayed in delivering the commodity f.a.s. vessel at such port, the Contractor establishes that such delay is due to causes beyond the control and without the fault or negligence of Contractor and any of his/her subcontractors including but not limited to failure of Agency to make a vessel or dock available, Agency shall reimburse Contractor on presentation of paid bills for charges incurred in connection with storage in cars and for other charges resulting from such delay, unless Contractor failed to ship pursuant to shipping instructions and Agency determines that such failure caused the delay in delivering the commodity f.a.s. vessel.

Article 60. Loading Truck and Rail Shipments

(a) Truck shipments shall be loaded and (when necessary) braced to ensure that there will be no shifting of the commodity in transit and that it will arrive at destination in damage-free condition.

(b) Rail shipments shall be loaded in accordance with the guidelines set forth in the Association of American Railroads Loading Pamphlets applicable to the commodity to provide safe shipment to destination. If shipping instructions require partial unloading at a stop-off en route, Contractor shall order cars equipped with bracing devices and shall properly brace the loaded commodity with such devices. Contractor shall not delay shipment if the carrier is unable to furnish bracing equipment promptly. If the carrier is unable to furnish such equipment, Contractor shall load and sturdily brace the commodity in accordance with the aforementioned pamphlets; the cost of such bracing shall be for the account of Contractor.

Article 61. Protective Services

(a) If the contract specifies that delivery is to be made f.o.b. cars or trucks at origin, Contractor shall order protective services as specified in the shipping instructions issued by Agency.

(b) If the contract provides for delivery at point(s) other than f.o.b. cars or truck at origin, Contractor shall provide protective services when, and to the extent necessary to adequately protect the commodity while in transit, including allowable free time for unloading at intermediate or final destination(s), or both.

Article 62. Variation in Quantity

No variation in the quantity of any item called for by the contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in the announcement.

Article 63. Failure of the Commodity to Meet Contract Requirements and Specifications

(a) Contractor shall be liable for failure of the commodity to meet all of the contract requirements and specifications, including those with respect to packages and containers, subject to the other provisions of this Article.

(b) If Agency discovers on or after delivery that all or any part of the commodity (including packages and containers) did not meet contract requirements and specifications at time of delivery, Agency shall have the right:

(1) to accept or retain the entire quantity and hold Contractor liable for the damages sustained, as determined by Agency, or

(2) to reject the entire quantity or to reject a portion thereof and accept or retain the remainder. Agency may at its discretion terminate the contract with respect to the quantity rejected or permit Contractor to replace all or part of the quantity rejected with a quantity of the commodity that does conform to all contract requirements and specifications and, in either circumstance, hold Contractor liable for damages sustained, as determined by Agency. To "reject" means to refuse to accept on delivery or, after delivery and acceptance, to notify Contractor of revocation of the acceptance, in whole or in part. In either event, Contractor shall be held liable for all damages sustained, as determined by Agency.

(c) Any quantity rejected may be returned to Contractor, destroyed (if unfit for commercial use), or disposed of for the account of Contractor in accordance with applicable health and sanitation laws and regulations. Any rejection of a quantity of the commodity delivered by common carrier shall be made by the office of Agency which issued the shipping instructions. Consignee may inform the carrier or Contractor of rejection of a quantity of the commodity delivered by contract carrier or by Contractor's own trucks. Contractor will be advised of Agency's election under (b)(2) of this Article either at the time of rejection or within a reasonable time thereafter.

(d) Inspection, checkloading, issuance of inspection or checkloading certificates, shipping instructions, or bills of lading, any payment by Agency, or the receipt of a commodity shall not constitute a waiver of Agency's rights under this Article.

(e) The rights and remedies of Agency provided in this Article are not exclusive or in derogation of any other rights and remedies provided by law or contract.

Article 64. Loss Due to Deterioration or Spoilage

Contractor shall reimburse Agency for all losses due to deterioration or spoilage sustained by Agency for which Contractor is responsible, but only if such losses are discovered by such date as may be stated in the announcement, or a reasonable time, as determined by Agency, after delivery if no such date is stated. Contractor agrees to reimburse Agency for such losses within 10 days after date of billing by Agency. That part of the commodity as to which Agency makes a claim based on deterioration or spoilage shall be held by Agency subject to disposition instructions of Contractor (unless the nature of the deterioration or spoilage is such as to require condemnation and destruction as determined by Agency or its authorized representative) but need not be held by Agency in excess of 30 days after Agency sends notice of such claim to Contractor. In lieu of reimbursing Agency, Contractor may replace the deteriorated or spoiled commodity with an equal quantity of commodity which conforms to all contract requirements and specifications, if such replacement is agreed to by Agency.

Article 65. Obliteration of Markings

The appearance in commercial or other channels of any labels, bags, cans, can lids, cases, or any other type of packaging, either filled or unfilled (hereinafter referred to as "containers and container materials") bearing markings required under the contract may cause Agency expense in determining whether commodities have been diverted from authorized use and in answering inquiries. Contractor agrees to take necessary action to prevent the appearance in commercial or other channels of containers and container materials bearing markings required under the contract, including those held by Contractor or others, e.g., overruns. The following actions with respect to all inner and outer containers and container materials will constitute compliance with the intent of this Article: (a) complete obliteration of all markings required under the contract with a permanent opaque paint, or removal of labels which bear such markings, and overlaying or replacing markings so obliterated or removed with commercial labelings; (b) placing a transparent pressure-sensitive sticker on all containers and container materials bearing USDA markings, which shall state in lettering of a prominent size "SALVAGE BY (insert firm's name)" directly on the "NOT TO BE SOLD OR EXCHANGED" legend wherever it appears on the containers and container materials; (c) drawing one or more x's completely through the markings and with a permanent stamp conspicuously placing thereon the following legend: "This container has not been used and shall not be used for shipment of Government commodities."; or (d) any other actions, approved by the Contracting Officer, which accomplish the intent of the foregoing.

Article 66. Change in Place or Manner of Shipment or Delivery

(a) If the commodity price is on the basis of delivery f.o.b. cars or trucks at origin and Contractor requests a change in the shipping point named in the contract and such request is approved by Agency, any additional cost of transportation and related services shall be deducted from payments otherwise due Contractor and any savings shall accrue to Agency.

(b) If the commodity price is on the basis of delivery f.o.b. cars or trucks at destination or f.a.s. vessel at designated ports and if Agency orders

delivery of the commodity in a manner or to destinations other than those stated in the contract, any additional cost of transportation and related services shall be for the account of Agency and any savings will accrue to Agency.

Article 67. Compensation for Late Mailing of Notice to Deliver

Failure to mail a Notice to Deliver in accordance with the terms of the contract may result in delays in shipment and damages to contractor. Because it will be difficult to prove the amount of such damage, Agency shall pay to Contractor as liquidated damages for causing delay in shipment by late mailing of a Notice to Deliver an amount to be specified in the announcement for each day of such delay in shipment not to exceed the number of days by which the Notice to Deliver was mailed late. It is mutually agreed that such damages are a reasonable estimate of the probable actual damages that may be caused by late mailing of such Notice(s). Contractor's claim for payment of damages for delays with respect to the shipping period for which a Notice to Deliver was mailed late must be supported by evidence satisfactory to Agency that Contractor was prepared to ship in accordance with the contract shipping schedule.

If the delay in shipment caused by the late mailing of a Notice to Deliver causes delays in other shipments in later shipping periods under the same contract, Contractor may claim liquidated damages for delays in the other shipments occurring during the later shipping period if he/she furnishes evidence satisfactory to Agency that he/she could not, without disruption of normal business operations, complete shipments as required under the contract shipping schedule or any extension thereof by Agency.

Agency shall not be liable for liquidated damages under this section if Agency determines that, at the time the Notice to Deliver is to be mailed, such mailing would be impracticable because a condition specified in Article 2(h) of this document exists, or is likely to exist, which could prevent either shipment by Contractor or acceptance by consignee. In such cases, the period for mailing of the Notice to Deliver and shipment of the commodity shall be extended for the number of days that Agency determines such condition exists.

Article 68. Termination for Convenience of the Government

The Contracting Officer, by written notice, may terminate the contract, in whole or in part, when it is in the best interest of the Government. If the contract is for purchase of commodities and is so terminated, the Contractor shall be compensated in accordance with Part 1-8 of the Federal Procurement Regulations (41 CFR Part 1-8), in effect on the contract's date. To the extent that the contract is for services and is so terminated, the Government shall be liable only for payment in accordance with the payment provisions of the contract for services rendered prior to the effective date of termination.

Article 69. Late Shipment

(a) If Contractor determines that he/she will not be able to make shipment of a quantity of the commodity by the final shipment date under the contract, or if he/she does not make shipment of a quantity of the commodity by the final

shipment date, he/she shall inform Contracting Officer as soon as feasible, indicating how soon he/she expects to be able to make shipments. Each week thereafter until all late shipments have been made, he/she shall inform Contracting Officer how soon he/she expects to be able to make shipments.

(b) The following shall apply to late shipments:

(1) Late shipment of the commodity by Contractor will cause serious and substantial damages to Agency because of its urgent need for timely performance, but it will be difficult to prove the amount of such damages.

(2) In the event the contract is not terminated because of delay in shipment, Contractor shall continue performance and be liable to Agency for liquidated damages, at the daily rate specified in the announcement, with respect to the quantity of the commodity which is not shipped by the final shipment date under the contract as fixed and agreed, and liquidated damages for each day of delay, until such time as the commodity is shipped.

(3) In the event Agency exercises its right of termination in whole or in part as provided in paragraph (a) of Article 70 Contractor shall be liable to Agency for excess costs as provided in paragraph (b) of Article 70 and, in addition, for liquidated damages. Liquidated damages are assessed at the daily rate specified in the announcement against the quantity of commodity not shipped by the final shipment date under the contract as fixed and agreed. Liquidated damages are payable for each day of delay, until such time as Agency obtains or could have obtained shipment of a similar commodity elsewhere.

(4) It is mutually agreed that such damages are a reasonable estimate of the probable actual damages for delay in shipment. In no event shall liquidated damages be imposed for more than 45 days of delay except where mutually agreed upon between Contractor and Agency.

(5) The foregoing provisions for liquidated damages shall also apply to replacement shipments, if such shipments are not made within the agreed time for such replacements.

(6) Shipment made by Contractor at his/her risk prior to receipt of results of inspection shall not be considered to be shipment under the contract if results of inspection indicate the commodity does not meet contract specifications and the commodity is not accepted by Agency.

(7) Contractor shall not be liable for liquidated damages for delays due to causes which would relieve the contractor from liability for excess costs as provided in paragraph (c) of Article 70.

Article 70. Default and Termination

(a) Agency may, subject to the provisions of paragraph (c) below, by written notice of default to Contractor, terminate the whole or any part of the contract in any one of the following circumstances:

(1) If Contractor fails to make shipment of the commodity within the time required by the contract or any extension thereof; or

(2) If Contractor fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of the contract in accordance with its terms, and in either of these two circumstances, does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from Agency specifying such failure.

(b) In the event Agency terminates the contract in whole or in part as provided in paragraph (a) of this Article, Agency may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, commodities or services similar to those so terminated, and Contractor shall be liable to Agency for any excess costs for such similar commodities or services: Provided, That Contractor shall continue the performance of the contract to the extent not terminated under the provisions of this Article.

(c) Except with respect to defaults of subcontractors, Contractor shall not be liable to Agency for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of Contractor: Provided, That if Contractor's plant was on strike at the time he/she submitted the offer resulting in the contract, and if Contractor's failure to perform the contract was because of such strike, Contractor shall not be excused from liability under this paragraph. If the failure to perform is caused by default of a subcontractor, and if such default arises out of causes beyond the control of both Contractor and the subcontractor, and without the fault or negligence of either of them, Contractor shall not be liable for any excess costs incurred by Agency in procuring elsewhere, unless the commodity or services to be furnished by the subcontractor were obtainable by Contractor from other sources in sufficient time to permit Contractor to meet the required time of shipment. Contractor shall furnish documentary evidence of the causes beyond his control which resulted in the failure to perform the contract.

(d) If, after notice of termination of the contract under the provisions of this Article, it is determined for any reason that Contractor was not in default under the provisions of this Article, or that the default was excusable under the provisions of this Article, and if the contract contains a clause providing for termination for convenience of Agency, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of the contract under the provisions of this Article, it is determined for any reason that Contractor was not in default under the provision of this Article, and if the contract does not contain a clause providing for termination for convenience of Agency, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of Article 75.

(e) The rights and remedies of Agency provided in this Article and Article 69 shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

(f) As used in paragraph (c) of this Article, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

Article 71. Assignment

(a) If USDA is the Agency named in the contract, no assignment by Contractor shall be made of the contract or of any rights thereunder, except that, pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if the contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due Contractor from Agency under the contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency. Any such assignment shall be recognized only if and when the assignee thereof files with Agency written notice of the assignment, together with a signed copy of the instrument of assignment, in accordance with the instructions on Form ASCS-66, Notice of Assignment. Also, any assignment shall cover all amounts payable under the contract and not already paid; shall not be subject to further assignment, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. The instrument of assignment may be executed on Form ASCS-347, Instrument of Assignment.

(b) If CCC is the Agency named in the contract, no assignment by Contractor shall be made of the contract, or of any right thereunder, except that Contractor may assign the proceeds of the contract to a bank, trust company, or other financing institution, including any Federal lending agency, or to a person or firm that holds a lien or encumbrance at the time of assignment, and, subject to the prior approval of the Contracting Officer, assignment may be made to any other person or firm: Provided, That such assignment shall be recognized only if and when the assignee thereof files with Agency written notice of the assignment together with a signed copy of the instrument of assignment, in accordance with the instructions on Form CCC-251, Notice of Assignment: And provided further, That any such assignment shall cover all amounts payable and not already paid under the contract, shall not be made to more than one party and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. The instrument of assignment may be executed on Form CCC-252, Instrument of Assignment.

(c) Forms relating to assignments may be obtained from the Contracting Officer or the ASCS Commodity Office. Contractor may use the forms mentioned in (a) and (b) or may use his own forms providing they are in a format basically consistent with the prescribed forms and contain essentially the same provisions.

Article 72. Invoices and Payment

Invoices for payment for the commodity, and for reimbursement of transportation and protective service charges, if any, shall be submitted separately by Contractor to the ASCS Commodity Office. Invoices for payment for the commodity shall be made on the invoice portion of the Notice to Deliver or on a commercial type invoice and be supported by the original (official) inspection and checkloading certificate(s), if applicable, and either a copy of commercial

bill of lading signed by carrier's agent or, in lieu thereof, a copy of a consignee's receipt evidencing delivery. Invoices for reimbursement of transportation and protective service charges, if any, shall be supported by the original or a copy of carrier's receipted freight bill or invoice. If shipment is by contract carrier, Contractor's invoice shall also be supported by a copy of the contract between Contractor and the truck line showing the schedule of rates, or a copy of the truck line's published rates.

When the total quantity to be invoiced includes a fraction of a pound, the fraction should be omitted if less than one-half pound and raised to the next full pound if one-half pound or more. Only whole pounds should be shown on the invoice.

It is mutually agreed and understood that in submitting an invoice, the Contractor thereby certifies that all requirements of the contract have been satisfied and Contractor has complied fully with the representations, certifications, and warranties set forth in Part C of this document. Submission of an invoice when all contract terms and conditions have not been satisfied will subject Contractor to punishment as provided in Title 15, 18, and 31 United States Code.

Agency shall make payment to Contractor (or the assignee if an assignment is made pursuant to Article 71) of any amounts due with respect to each shipment as soon as practicable after receipt by the ASCS Commodity Office of a properly prepared invoice with the required supporting documents. Contractor may include more than one shipment on any invoice.

If a gross billing weight is shown in the offer and is to be considered in determining which offers are most advantageous to Agency, and if the gross billing weight as shown in the offer differs from that shown on the carrier's bill of lading, Agency will require payment by Contractor for any excess transportation charges based upon the weight differences. Any savings shall accrue to Agency.

Article 73. Extras

Except as otherwise provided in the contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

Article 74. Setoff

(a) Subject to the provisions of paragraphs (b) respecting assignments and (c) respecting liens, if Contractor is indebted to Agency, the amount of such indebtedness may be set off against the proceeds of the contract. If Contractor is indebted to the United States for taxes and notice of lien has been filed in accordance with the provisions of the Internal Revenue Code of 1954 (26 U.S.C. 6323) or any amendments thereof or modifications thereof or Notice of Levy has been served on USDA in accordance with the provisions of the Internal Revenue Code (26 U.S.C. 6331) against money payable to Contractor, or if Contractor is indebted to any other agency of the United States, the amount of such taxes or debt may likewise be set off; and, if Agency is CCC, such setoff shall be in accordance with 7 CFR Part 1408.

(b) Where an assignment has been made as provided in Article 71, the following provisions with respect to setoff shall apply:

(1) Notwithstanding the assignment, Agency may set off:

(i) Any amounts due Agency under the contract;

(ii) Any amounts for which Contractor is indebted to the United States for taxes for which a notice of lien was filed or a Notice of Levy was served in accordance with the provisions of the Internal Revenue Code of 1954 (26 U.S.C. 6323), or any amendments thereto or modifications thereof, before acknowledgement by Agency or receipt of the notice of assignment; and

(iii) Any amounts, other than amounts specified in (i) and (ii) of this paragraph (1) due Agency or any other agency of the United States, if Agency notified the assignee of such amounts to be set off at the time acknowledgement was made of receipt of notice of such assignment.

(2) Any indebtedness of Contractor to any agency of the United States, which cannot be set off under subparagraph (1) of this paragraph may be set off against any amount payable under the contract which remains after deduction of amounts (including interest and other charges) owing by Contractor to the assignee for which the assignment was made.

(c) Any amount due prior lien holders who have not executed a waiver shall be deducted prior to setoff of any indebtedness referred to in paragraph (a) of this Article. If a waiver of lien has been executed, and if the holder of the lien is named by Contractor as payee on invoices or as assignee of claims for monies due under the contract to Contractor, any indebtedness to any agency of the Government under any transaction not under the contract may be set off against any amount due and payable under the contract which is in excess of the amount of such invoices or assignment.

(d) Setoff as provided in the Article shall not deprive Contractor of any right he/she might otherwise have to contest the justness of the indebtedness involved in the setoff action either by administrative appeal or by legal action.

Article 75. Disputes

(a) All contracts awarded are subject to the Contract Disputes Act of 1978 (P. L. 95-563).

(b) Except as provided in the Act, all disputes arising under or relating to a contract shall be resolved in accordance with this clause.

(c) (1) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to the contract.

(2) A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim pursuant to the Act.

(3) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for decision. A claim by the Government against the Contractor shall be subject to a decision by the Contracting Officer.

(d) For Contractor claims of more than \$50,000, the Contractor shall submit with the claim a certification that the claim is made in good faith; the supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable. The certification shall be executed by the Contractor if an individual. When the Contractor is not an individual, the certification shall be executed by a senior company official in charge at the Contractor's plant or location involved, or by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must render a decision within 60 days. For Contractor claims in excess of \$50,000 the Contracting Officer must decide the claim within 60 days or notify the Contractor of the date when the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) The authority of the Contracting Officer under the Act does not extend to claims or disputes which by statute or regulation other agencies are expressly authorized to decide.

(h) Interest on the amount found due on a Contractor claim shall be paid from the date the claim is received by the Contracting Officer until the date of payment.

(i) Except as the parties may otherwise agree, pending final resolution of a claim by the Contractor arising under the contract, the Contractor shall proceed diligently with the performance of the contract in accordance with the Contracting Officer's decision.

Article 76. Fraudulent Claims

(a) Section 5 of the Contract Disputes Act of 1978 (41 U.S.C. 601, 604) provides that if a Contractor is unable to support any part of its claim under the contract and such inability is attributable to misrepresentation of fact or fraud on the part of the Contractor, it shall be liable to the Government for:

(1) an amount equal to the unsupported part of the claim; and

(2) costs to the Government attributable to reviewing that part of the claim.

(b) "Misrepresentation of fact" is defined by the Contract Disputes Act of 1978 as a false statement of substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

(c) All instances of suspected fraudulent claims shall be reported, through channels, to the Attorney General.

Article 77. Audit of Records and Access to Premises

(a) Contractor agrees that Agency and the Comptroller General of the United States through their duly authorized representatives shall, until the expiration of three years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers and records on Contractor involving transactions relating to the contract.

(b) Contractor further agrees to include in all his/her subcontracts hereunder a provision to the effect that the subcontractor agrees that Agency or the Comptroller General of the United States through their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions relating to the subcontract. The term "subcontract" as used in this Article excludes:

(1) purchase orders not exceeding \$10,000;

(2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public; and

(3) bills of lading of common carriers or contract carriers.

Article 78-84. [RESERVED]

PART E - ADDITIONAL STANDARD CONTRACT PROVISIONS FOR SERVICING OF AGENCY-OWNED COMMODITIES

Article 85. Performance Security

Within 10 days after acceptance of the offer, Contractor shall furnish a surety bond acceptable to Agency conditioned on his/her faithful performance of each and all of the provisions of the contract, or, in lieu of such bond, a certified or cashier's check or other acceptable security, including an irrevocable commercial letter of credit, acceptable to Agency. Such bond or security shall be in the amount specified in the contract, and shall be payable to Agency. Failure to furnish such performance security within such time is a failure of performance under the provisions of Article 70.

Article 86. Delivery to Contractor by Agency

(a) Agency shall deliver the agricultural commodity to be serviced for its account, f.o.b. cars or trucks, at the option of Agency, at Contractor's plant. If Contractor's plant is not served by a railroad and Agency does not choose to deliver the agricultural commodity f.o.b. trucks, then Agency shall deliver such commodity f.o.b. cars at the railroad delivery point customarily used by Contractor as stated in the contract. The cost of unloading the agricultural commodity and any transportation from unloading point to plant shall be at the expense of Contractor. It shall be the responsibility of Contractor to unload cars within the free time period allowed by the railroad. Notwithstanding the foregoing provisions of this paragraph (a), if the agricultural commodity is in store at the plant where it is to be serviced, Agency may deliver in store by the surrender of warehouse receipts or the issuance of other appropriate delivery documents. Contractor shall furnish Agency with acceptable receipts covering the quantities of the agricultural commodity delivered by Agency to the unloading point or transferred.

Contractor shall submit promptly to the carrier and Agency a detailed written report of any overage, shortage, or damage noted at the time of unloading or transfer. The report shall contain, but not be limited to, the following information:

- (1) The seal numbers on the car when it is placed for unloading.
- (2) The condition of the seals when the car was placed for unloading, whether broken, or intact.
- (3) The condition of the car at the time it was placed for unloading, such as leaks, loose drainage valves, etc.

(b) The agricultural commodity delivered by Agency shall be of a quality that will permit Contractor to produce a serviced commodity meeting the specifications required by the contract. If Contractor has reason to believe the agricultural commodity received from Agency is not of such quality, he/she shall immediately notify Agency of the reasons for such belief and request advice regarding action to be taken by him/her, unless the contract contains a provision prescribing the action to be taken by Contractor in such event. Any such notice by telephone shall be confirmed promptly in writing by Contractor.

Article 87. Restriction Against Substitution

Since title to the agricultural commodity delivered by Agency is at all times vested in Agency while such commodity is in the custody of Contractor, Contractor shall not substitute any commodity owned by him/her for the agricultural commodity owned by Agency unless Agency agrees in writing and prescribes conditions for such substitution.

Article 88. Delivery to Agency by Contractor

(a) The quantity of serviced commodity which Contractor shall deliver to Agency shall not be less than the quantity, if any, specified in the contract, and in any event shall be all of the serviced commodity produced from the agricultural commodity delivered by Agency even though such quantity exceeds the quantity specified in the contract. Unless the contract provides otherwise, Contractor shall account to Agency for any quantity or portion of the agricultural commodity not serviced.

(b) The serviced commodity shall be delivered by Contractor in the manner (f.o.b. car or truck, at option of Agency) and at the point(s) of delivery specified in the contract. If the contract provides for delivery f.o.b. cars at Contractor's plant or warehouse and such plant or warehouse is not located on a railroad, the point(s) of delivery shall, at the option of Agency, be any place in the city where the plant or warehouse is located, or f.o.b. cars at the railroad delivery point customarily used by Contractor.

(c) Immediately on shipment, Contractor shall, in accordance with instructions from Agency, notify Agency or consignee or both of the shipment.

(d) Subject to the provisions in Article 58(c), and the right of rejection as provided in Article 63, risk of loss shall pass to Agency on delivery of the serviced commodity to Agency.

Article 89. Carrier Accessorial Charges

Contractor agrees to pay any demurrage and protective service charges which may accrue on shipments of the agricultural commodity because of failure to unload such commodity within the free time period allowed by carrier after delivery to Contractor as provided in Article 86. Contractor also agrees to pay any demurrage and protective service charges which may accrue on cars ordered by Contractor and placed for loading, but not loaded and delivered to carrier within free time allowed by carrier. In placing orders with carrier for cars, Contractor agrees to specify appropriate size cars necessary to obtain lowest freight rate. Any excess charges resulting from failure of Contractor to so specify shall be for account of Contractor.

Article 90. Transit

Contractor shall maintain transit records and render reports in accordance with the rules of the Weighing and Inspection Bureau governing the transit point. Contractor shall furnish Agency such transit data as may be requested from time to time. Application of transit on outbound movements will be as directed by

Agency with documentation in accordance with the rules of the local Weighing and Inspection Bureau.

Article 91 Liability

(a) Contractor shall be liable for loss, damage, destruction, or deterioration from any cause whatsoever of the agricultural commodity received from Agency until the serviced commodity has been delivered to Agency in accordance with provisions of the contract or the agricultural commodity or serviced commodity has been removed by Agency from Contractor's custody.

(b) Any insurance carried by Contractor covering the agricultural commodity or serviced commodity shall accrue to benefit of Agency and any collection shall be by and at the expense of Contractor. Failure of Contractor to collect full value from any insurer shall not relieve Contractor of liability for the full amount of damages sustained by Agency.

Article 92. Agency's Delay and Other Failure to Perform

If, due to causes beyond the control and without the fault or negligence of Agency, Agency is unduly delayed or is unable to deliver to Contractor for servicing all or any part of the agricultural commodity which Contractor has contracted to service, Agency shall not be required to deliver or replace such commodity and shall be liable only for the cost (including transportation and handling costs) of containers and packaging materials purchased by Contractor for use in performance of the contract: Provided, That Contractor delivers such containers and packaging materials to Agency.

Article 93. Performance Report

Contractor shall prepare a Form ASCS-11, "Performance Report," as of the close of business each day when the agricultural commodity is received, processed or packaged or the serviced commodity is shipped. The original and one copy of this report signed by a representative of Contractor and an inspector shall be mailed promptly to the ASCS Commodity Office. Three copies of the report will be retained by the inspector. Form ASCS-11 will be supplied to the Contractor by Agency.

Article 94. Service Contract Act of 1965, as amended

All contracts, if in excess of \$2,500 and to the extent that it is of the character to which the Service Contract Act of 1965, as amended (41 U.S.C. 351-357) applies, are subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor thereunder.

(a) Compensation - Each service employee employed in the performance of a contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wage and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or his authorized representative, as specified in any attachment to this contract. If there is such an attachment, any class of service employees which is not listed therein, but which is to be employed under a contract, shall be classified by

the Contractor so as to provide a reasonable relationship between such classifications and those listed in the attachment, and shall be paid such monetary wages and furnished such fringe benefits as are determined by agreement of the interested parties, who shall be deemed to be the contracting agency, the Contractor, and the employees who will perform on the contract or their representatives. If the interested parties do not agree on a classification or reclassification which is, in fact, conformable, the Contracting Officer shall submit the question, together with his/her recommendation, to the Office of Special Wage Standards, Employment Standards Administration (ESA), Department of Labor, for final determination. Failure to pay such employees the compensation agreed upon by the interested parties or finally determined by the Administrator or his/her authorized representative shall be a violation of the contract. No employee engaged in performing work on a contract shall in any event be paid less than the minimum wage specified under Section 6 (a) (1) of the Fair Labor Standards Act of 1938, as amended.

(b) Adjustment - If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965, as amended, the term of a contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determination to be issued by the Employment Standards Administration, Department of Labor, as provided in the Act.

(c) Obligation to Furnish Fringe Benefits - The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in 29 CFR Part 4, Subparts B and C, and not otherwise.

(d) Minimum Wage - In the absence of a minimum wage attachment for the contract, neither the Contractor nor any subcontractor under the contract shall pay any of his employees performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended. Nothing in this provision shall relieve the Contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(e) Obligations Attributable to Predecessor Contracts - If a contract succeeds a contract, subject to the Service Contract Act of 1965, as amended, under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then in the absence of a minimum wage attachment for the contract neither the Contractor nor any subcontractor under the contract shall pay any service employee performing any of the contract work less than the wages and fringe benefits, provided for in such collective bargaining agreements, to which such employee would be entitled if employed under the predecessor contract, including accrued wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under a contract may be relieved of the foregoing obligation unless the Secretary of Labor or his authorized representative determines that the collective bargaining agreement applicable to service

employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, or finds, after a hearing as provided in Department of Labor regulations, 29 CFR 4.10, that the wages and fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a similar character in the locality.

(f) Notification to Employees - The Contractor and any subcontractor under the contract shall notify each service employee commencing work on a contract of the minimum wage and any fringe benefits required to be paid pursuant to the contract, or shall post a notice of such wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

(g) Safe and Sanitary Working Conditions - The Contractor or subcontractor shall not permit any part of the services called for by the contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the Contractor or subcontractor shall comply with safety and health standards applied under 29 CFR Part 1925.

(h) Records - The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in subparagraphs (1) through (5) of this paragraph for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Employment Standards Administration (ESA), Department of Labor.

(1) His/her name and address.

(2) His/her work classification or classifications, rate or rates of monetary wages and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation.

(3) His/her daily and weekly hours so worked.

(4) Any deductions, rebates, or refunds from his/her total daily or weekly compensation.

(5) A list of monetary wages and fringe benefits for those classes of service employees not included in the minimum wage attachment to the contract, but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator (as defined in 41 CFR 1-12.902-2(c)) or his/her authorized representative pursuant to the Labor Standards Clause in paragraph (a) of this article. A copy of the report required in paragraph (m) (1) of this article shall be deemed to be such a list.

(i) Withholding of Payment and Termination of Contract - The contracting officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract such sums as he/she, or an appropriate officer of the Department of Labor, decides may be necessary to pay underpaid employees. Additionally, any failure to comply with the requirements

of this article relating to the Service Contract Act of 1965 may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(j) Subcontractors - The Contractor agrees to insert this clause relating to the Service Contract Act of 1965 in all subcontracts. The term "Contractor" as used in this clause in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

(k) Service Employee - As used in this article relating to the Service Contract Act of 1965, as amended, the term "service employee" means any person engaged in the performance of a contract entered into by the United States and not exempted under section 7, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(l) Comparable Rates - The following classes of service employees excepted to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

EMPLOYEE CLASS: _____

MONETARY WAGE - FRINGE BENEFITS _____

(m) Contractors's Report

(1) If there is a wage determination attachment to the contract and one or more classes of service employees which are not listed thereon are to be employed under the contract, the Contractor shall report to the Contracting Officer the monetary wages to be paid and the fringe benefits to be provided each such class of service employees. Such report shall be made promptly as soon as such compensation has been determined, as provided in paragraph (a) of this clause.

(2) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or

amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(n) Regulations Incorporated by Reference - All interpretation of Service Contract Act of 1965 expressed in 29 CFR Part 4, Subpart C, are hereby incorporated by reference in all contracts.

(o) Exemptions - This article relating to the Service Contract Act of 1965 shall not apply to the following:

(1) Any contract of the United States or District of Columbia for constructions, alteration, and/or repair, including painting and decorating of public buildings or public works;

(2) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45);

(3) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express railway line, or oil or gas pipeline where published tariff rates are in effect, or where such carriage is subject to rates covered by section 22 of the Interstate Commerce Act;

(4) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(5) Any contract for public utility services, including electric light and power, water, steam, or gas;

(6) Any employment contract providing for direct services to a Federal agency by an individual or individuals;

(7) Any contract with the Post Office Department (U.S. Postal Service), the principal purpose of which is the operation of postal contract stations;

(8) Any services to be furnished outside the United States. For geographic purposes, the "United States" is defined in section 8(d) of the Service Contract Act of 1965 to include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands, as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island, and Canton Island. It does not include any other territory under the jurisdiction of the United States or any United States base or possession within a foreign country;

(9) Any of the following contracts exempted from all provisions of the Service Contract Act of 1965, pursuant to section 4(b) of the Act, which exemptions the Secretary of Labor, prior to amendment of such section by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(i) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly

scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom;

(ii) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness or accident.

(p) Special Employees - Notwithstanding any of the provisions in paragraphs (a) through (n) of this article relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) (i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a) (1) or 2(b) (1) of the Service Contract Act of 1965, without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a) (2) of that Act, in accordance with the procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, (29 U.S.C. 201 et seq.) in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(ii) The Administrator will issue certificates under the Service Contract Act of 1965 for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two Acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525);

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(2) An employee engaged in an occupation in which he customarily and regularly receives more than \$30 a month in tips may have the amount of his tips credited by his employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with the regulations in 29 CFR Part 531: Provided, however, That the amount of such credit may not exceed \$1.325 per hour beginning January 1, 1978; \$1.305 per hour beginning January 1, 1979; \$1.24 per hour beginning January 1, 1980; and \$1.34

per hour after December 31, 1980. If the employer pays in full cents, the \$1.325 figure must be rounded down to \$1.32 and the \$1.305 figure to \$1.30, in order that the employer will not be crediting more than the permissible percentage.



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